



BUCKET NO: 209858US55

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

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PASCAL SIMON

: EXAMINER: TRAN

SERIAL NO: 09/986,264

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FILED: NOVEMBER 8, 2001

: GROUP ART UNIT: 1615

FOR: COSMETIC ARTICLES HAVING  
ENCAPSULATED LIQUID AND  
METHOD OF MAKING SAME

:

APPEAL BRIEF

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

This brief is submitted in response to the rejection dated April 4, 2005.

REAL PARTY OF INTEREST

The real party of interest herein is L'Oréal of Paris, France.

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### **RELATED APPEALS AND INTERFERENCES**

To the best of Appellants' knowledge, there are no other appeals or interferences which will directly affect or be directly affected by, or have a bearing on, the Board's decision in this appeal.

### **STATUS OF CLAIMS**

Claims 1-114 are active in this application. Claims 41-51 were subjected to a Restriction Requirement and have been withdrawn from consideration by the Office.

### **STATUS OF AMENDMENTS**

There are no outstanding amendments in this case.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

The present claims are directed to a cosmetic article comprising a substrate having a cosmetic composition associated therewith, and at least one breakable capsule associated with the substrate so that a liquid in the capsule wets the cosmetic composition of the substrate when the capsule is broken. Additional features of the article can include, for example, association with a container which has a means to break the capsule(s), production of an exothermic reaction upon breaking the capsule(s), the provision of a moisture impermeable ply included in the substrate, and the provision of pockets containing the breakable capsule.

As described in the present specification, the claimed articles provide a number of advantages over prior wet and dry wipes that had not been described or suggested before (page 2-3 of the specification):

- (1) the user need not have access to a water source, and the articles can be conveniently used anywhere;

- (2) the amount of water/liquid can be controlled such that it matches the amount of surfactant (or other cosmetic composition) associated with the substrate;
- (3) by associating a predetermined amount of water with the substrate, the user does not inadvertently wash away the ingredients of the substrate, as could have been the case with prior dry wipes if held under a faucet for an excessive period of time;
- (4) because the water is encapsulated, the wipes are not subject to drying as has been the case with wet wipes;
- (5) in contrast to typical wet wipes, the use of encapsulated water allows the convenient use of thicker substrates and substrates that expand when wet to provide a more pleasant experience to the consumer; and
- (6) because the liquid can be kept separate from the cosmetic until use is desired, the invention can be used with substances that would otherwise degrade if stored in a wet or pre-mixed state.

#### **REJECTIONS TO BE REVIEWED ON APPEAL**

- (1) The first rejection to be reviewed on appeal is of Claims 1-40 and 52-114 under 35 U.S.C. § 103(a) in view of the combination of U.S. patent no. 6,508,604 ("Bechmann") and WO 01/54661 ("Beck").
- (2) The second rejection to be reviewed on appeal is of Claims 52-114 under 35 U.S.C. § 103(a) in view of the combination of Bechmann, Beck, and U.S. patent no. 6,669,387 (Gruenbacher).

## **ARGUMENT**

### **Rejection No. 1**

The claims would not have been obvious in view of the combination of Bechmann and Beck for at least two reasons. First, the cited publications would not have been combined absent hindsight reconstruction of the present claims because the two publications teach completely different solutions for delivering liquids and cosmetic compositions from an article and modifying their respective teachings as the Office has done would go against what is taught in the references. Second, the combination of these two references simply fails to teach or suggest all of the limitations of the claimed invention.

Within the rejected claims, there are eight independent claims, Claims 1, 31, 52, 82, 95, 103, 105, and 114. Further details on the two points discussed above are provided in the context of each of these eight independent claims in the following.

### **Claim 1**

Claim 1 is directed to a cosmetic article including the following elements:

- (A) a substrate
- (B) a cosmetic composition associated with the substrate
- (C) at least one breakable capsule associated with said substrate, said at least one breakable capsule containing a liquid
- (D) wherein upon breaking of said at least one breakable capsule, said liquid wets said cosmetic composition.

As clearly stated by Bechmann in col. 2, lines 4-9 and lines 13-18, the main object of the Bechmann's invention to provide all of the ingredients in individual cells "which are released from the individually sealed enclosures" to enable control of "the flow and direction

of the cell's contents, once said at least one cell has been ruptured." Thus, Bechman simply provides all of the ingredients in individual cells or enclosures.

Bechmman does NOT describe a cosmetic composition associated with a substrate wherein the liquid contained in the breakable capsule wets the composition upon breakage. Thus, the Office has combined Bechmman with Beck. In the Final Office Action, the Office explains why Beck is cited: "Beck is relied upon solely for the teaching of an outer substrate." (Page 7 of the final Office Action). However, adding an outer substrate from Beck to Bechmann fails to describe or suggest all of the claim limitations, i.e., a cosmetic composition associated with the substrate, with a liquid in a capsule which wets the cosmetic upon breaking. On this basis alone, the rejection based on the combination of Beck and Bechmann should be reversed.

Moreover, extending the teachings of the references further still does not render the claimed invention obvious. Unlike Bechmann, Beck describes, for example, cleansing compositions associated with the substrate, such articles must be<sup>1</sup> dry that are "water-activated," which means that the article "is presented to the consumer in dry form to be used after wetting with water . . . by immersion in water or by placing it under a stream of water." (page 56 of Beck, emphasis added).

So what we have here are two completely different disclosures: one directed to controlling delivery of liquid compositions (Bechmann's capsules) and one directed to completely wetting an article with water. In fact, nowhere does Beck desire to control the amount of water to which the article is exposed. This is because Beck does NOT want to control the amount of water using cells, as in Bechmann. In fact, Beck describes that the dry articles which contain cleansers must be wetted by immersion in water or placed in a stream of water for "activation" (see page 56 of Beck and above). Bechmann and Beck are

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<sup>1</sup> As stated by Beck on page 4: "The articles of the present invention, which are preferably personal care articles, comprise the following essential components." (emphasis added).

describing two entirely different inventions. The Final Office Action combines the references to produce a structure, an interaction, and a result that is not suggested by either of the references separately and that is also not suggested by their collective teachings. The alleged motivation to combine these disclosures is only found in the present claims and the Office's hindsight reconstruction of the same. In other words, why would one have modified Beck to include the capsules from Bechmann because doing so would be contrary to the teachings that Beck states are essential to the invention, i.e., immersion in a stream of water? Certainly Bechmann would not have been modified by including a cosmetic composition associated with the substrate because doing so would also go against Bechmann's essential teachings, i.e., to provide a means for controlling "the flow and direction of the cell's contents." Moreover, if one were to modify Beck in view of Bechmann, the result would simply be to include all of the ingredients in cells. Therefore, the two publications would simply not have been combined because each disclosure is limited to their unique solutions and provide no indication whatsoever for the alleged combination proffered by the Office. For further guidance on this point, Applicants point to MPEP § 2141.02: "Prior art must be considered in its entirety, including disclosures that teach away from the claims."

The prior art does not suggest the modifications relied upon in the Office Action. The claimed invention is taught only by Applicants' own disclosure, not by the cited references. The two prior art references describe a capsule to encapsulate products (Bechmann) OR wetting a substrate with an external water source to wet the product associated with the substrate (Beck). Further, Beck, which was filed in January 2000, does not describe anything relating to the inclusion of breakable capsules notwithstanding the fact that breakable capsules were known many years earlier. For example, see col. 1, lines 22-55 of Bechmann, which states that breakable capsule systems were known in various patents; and Schneider (of record), which described breakable capsules in 1957.

The invention claimed in Claim 1 is directed to an arrangement in which a cosmetic composition is associated with the substrate, and moreover, liquid-containing capsules are provided so that when the capsules are broken, the liquid within the capsules wets the cosmetic composition. Applicant has recognized such an arrangement as advantageous in a number of respects. First, the user need not have a water source available for wetting the cosmetic composition, and thus, the article can be used virtually anywhere. Second, by providing a wetting liquid for the cosmetic composition within one or more capsules, it is possible to provide a more desirable and more repeatable result, since the amount of the liquid contained within in the capsule or capsules can be better matched to the cosmetic composition and the amount of cosmetic composition associated with the substrate. Thus, the arrangement is less prone to excessive or insufficient wetting which could occur with known articles in which the article is immersed in water or held under a faucet to wet the composition associated with the substrate. See also the additional advantages discussed at pages 2-3, *supra*.

It is respectfully submitted that the cited references fail to disclose or suggest the combined features of the present claims. Further, it is submitted that the cited references are not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features set forth in the present claims. Accordingly, it is submitted that the present claims define patentable subject matter in the sense of 35 U.S.C. §§ 102 and 103.

### Claim 31 and Claim 105

Claim 31 is directed to a cosmetic product including the following elements:

- (A) a container
- (B) a cosmetic article disposed in said container, the article defined by having
  - at least
    - i. a substrate
    - ii. at least one breakable capsule associated with said substrate, said at least one breakable capsule containing a liquid
    - iii. wherein upon breaking of said at least one breakable capsule, said liquid wets the substrate;
- (C) the container includes means for breaking said at least one breakable capsule.

Claim 105 is directed to a cosmetic product including the following elements:

- (A) a container
- (B) a cosmetic article disposed inside of said container; which article includes
  - i. a substrate
  - ii. at least one breakable capsule disposed inside said substrate;
- (C) the container includes means for breaking said at least one breakable capsule.

The specification in pp. 43-45 and Figures 11, 12 and 13 provide disclosure of the means for breaking the at least one breakable capsule as defined in Claims 31 and 105. Both Claims 31 and 105 are patentable in view of the combination of Bechmann and Beck because there is no description or suggestion to provide a container including a container with “means for breaking said at least one breakable capsule.” The inability of the Office to understand



this significant difference is illustrated in the Office's reply to Applicants' arguments to the first Office Action is found in the final Office Action.

First, the Office contends that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." (final Office Action at page 7) The argument was not based on attacking the references individually but based on the very simple fact that the combination of the two publications fails to describe the invention claimed in Claims 31 and 105 which recite "the container includes means for breaking said at least one breakable capsule."

Second, the Office contends that "it is noted that the feature upon which applicant relies (i.e., a means to break the capsule) is not recited in the rejected claims." (final Office Action at page 7). This is factually wrong as both Claims 31 and 105 recite "the container includes means for breaking said at least one breakable capsule." (see Exhibit 1-Claims).

Third, the Office then points to Bechmann at col. 3, lines 8-50 and col. 6, line 10 through col. 7, line 53 for alleged support for a container with means for breaking a capsule. The Office's reliance on Bechmann in this regard is misplaced. In col. 3, Bechmann simply describes that the cell system is burstable thereby opening the contents of the capsule to dispense the contents of the capsule. In columns 6 and 7, Bechmann describes different ways to modify the cell itself to facilitate the release of the cell's contents. While Bechmann in columns 7-8 describes that the disposable articles can be contained in an outer package, Bechmann does not a container with a means for breaking a capsule.

Put very simply, Bechmann describes that to facilitate breakage of the cell, the cell can be modified. What Bechmann does not describe or suggest is a container with a means for breaking said at least one breakable capsule as part of the container.

In light of the fact that Beck is simply directed to dry articles for personal cleansing that are used by immersion in water or holding under a stream of water, i.e., wetted by

immersion in water (page 56 of Beck), surely this cannot be a source for teaching “the container [i.e., a container that contains the article] includes means for breaking said at least one breakable capsule.” Therefore, there is nothing in the combination of these two publications which describes a container with a means to break the capsule. Further, there is no suggestion to include such a container as defined in the claims from these cited publications, particularly, in view of the fact that Bechmann, which of the two publications is the only one having a breakable capsule, describes that the cell itself should be modified to facilitate breaking (see col. 6-7).

The invention claimed in Claims 31 and 105 are directed to an arrangement in which a cosmetic article is disposed in a container which, in turn, has means for breaking the breakable capsule. Moreover, liquid-containing capsules are provided so that when the capsules are broken, the liquid within the capsules wets the cosmetic article. Applicant has recognized such an arrangement as advantageous in a number of respects. First, *inter alia*, the arrangement of Claims 31 and 105 have the advantages of Claim 1 above including : (1) the user need not have a water source available for wetting the cosmetic composition, and thus, the article can be used virtually anywhere; (2) by providing a wetting liquid for the cosmetic composition within one or more capsules, it is possible to provide a more desirable and more repeatable result, since the amount of the liquid contained within in the capsule or capsules can be better matched to the cosmetic composition and the amount of cosmetic composition associated with the substrate and the arrangement is less prone to excessive or insufficient wetting. Moreover, by providing a capsule breaking device associated with the container that contains the articles, additional advantages can be achieved including: (1) ensuring more effective breakage or use of the liquid in the capsule(s); (2) a more repeatable breakage can be achieved because, for example, an excessive or inconsistent breakage force might force the liquid from the article is avoided; and (3) the use of a breaking device can

allow the capsules to be formed with a higher breaking pressure (thus avoiding inadvertent breakage before use is desired). See, e.g., the paragraph bridging pages 45-46 of the present specification.

It is respectfully submitted that the cited references fail to disclose or suggest the combined features of the present claims. Further, it is submitted that the cited references are not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features set forth in the present claims. Accordingly, it is submitted that the present claims define patentable subject matter in the sense of 35 U.S.C. §§ 102 and 103.

#### **Claim 52**

Claim 52 is directed to a cosmetic article including the following elements:

- (A) at least three substrate layers: a 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> layer;
- (B) a 1<sup>st</sup> breakable capsule containing liquid between the 1<sup>st</sup> and 2<sup>nd</sup> layers;
- (C) a 2<sup>nd</sup> breakable capsule containing a 1<sup>st</sup> material between the 2<sup>nd</sup> and 3<sup>rd</sup> layers;
- (D) a 2<sup>nd</sup> material between the 2<sup>nd</sup> and 3<sup>rd</sup> layers; and
- (E) wherein an exothermic reaction is produced with the 1<sup>st</sup> material upon release from the 2<sup>nd</sup> breakable capsule when combined with the 2<sup>nd</sup> material and moreover, this exothermic reaction heats the liquid of the 1<sup>st</sup> breakable capsule.

This claim is not specifically addressed nor is there rationale proffered by the Office to substantiate the rejection in view of Bechmann and Beck. Nonetheless, there is nothing in the combination of these two publications which describes or reasonably suggests the arrangement provided for in Claim 52.

Beck describes an article that has at least two layers, the two layers carrying some cleansing component, which as discussed in detail above are in dry form and used upon immersion in water. (Pages 1 and 56 of Beck). In Bechmann, the support material for the cells can be a liquid impervious material or fibrous pad (col. 8, lines 40-67). Bechmann also describes that the contents of two cells can be mixed or exposed to an environmental liquid or gas (col. 3, lines 19-28) directed to any number of possible end uses “including, but not limited to: cleaning and/or rubbing, bleaching, cooling, heating, deodorizing, disinfecting, medicating, wiping . . .” (col. 3, lines 31-35).

Nowhere is there a description or suggestion in the combination of cited publications for the specific arrangement set forth in claim 52 for at least three layers and within these layers the 1<sup>st</sup> breakable capsule, the 2<sup>nd</sup> breakable capsule (with a 1<sup>st</sup> material) and 2<sup>nd</sup> material are positioned such that the 1<sup>st</sup> and 2<sup>nd</sup> materials from these specific positions mix to produce an exothermic reaction. Further, there is no disclosure or suggestion to use such an exothermic reaction to heat the liquid in another capsule (the 1<sup>st</sup> breakable capsule between the 1<sup>st</sup> and 2<sup>nd</sup> layers. There simply is no basis to support any conclusion of obviousness based on the combination of the two cited publications.

As discussed in the specification in the paragraph bridging pages 34-35 positioning of the different materials and different breakable capsules within the multi-layer cosmetic article permits the user to have the ability to wipe or cleanse with a heated cosmetic article.

The invention claimed in Claim 52 is directed to an arrangement in which at least three layers contain particularly positioned breakable capsules and materials that provide a unique benefit to the consumer when used. Moreover, liquid-containing capsules are provided so that when the capsules are broken, the liquid within the capsules wets the cosmetic article and provides heat. Applicant has recognized such an arrangement as advantageous in a number of respects. First, the user need not have a water source available

for wetting the cosmetic composition, and thus, the article can be used virtually anywhere. Second, by providing a wetting liquid for the cosmetic composition within one or more capsules, it is possible to provide a more desirable and more repeatable result, since the amount of the liquid contained within in the capsule or capsules can be better matched to the cosmetic composition and the amount of cosmetic composition associated with the substrate. Thus, the arrangement is less prone to excessive or insufficient wetting which could occur with known articles in which the article is immersed in water or held under a faucet to wet the composition associated with the substrate. Moreover, by providing an exothermic reaction to warm the liquid associated with the substrate, a warm or hot towel can be provided which does not require an appliance for heating the article.

It is respectfully submitted that the cited references fail to disclose or suggest the combined features of the present claims. Further, it is submitted that the cited references are not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features set forth in the present claims. Accordingly, it is submitted that the present claims define patentable subject matter in the sense of 35 U.S.C. §§ 102 and 103.

#### **Claim 82**

Claim 82 is directed to a cosmetic article including the following elements:

- (A) at least three substrate layers: a 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> layer;
- (B) the 2<sup>nd</sup> layer includes a moisture impermeable ply
- (C) a 1<sup>st</sup> breakable capsule containing a 1<sup>st</sup> liquid positioned between the 1<sup>st</sup> and 2<sup>nd</sup> substrate layers
- (D) a 2<sup>nd</sup> breakable capsule between the 2<sup>nd</sup> and 3<sup>rd</sup> substrate layers

(E) a 1<sup>st</sup> cosmetic composition disposed such that upon breaking the 1<sup>st</sup> capsule, the cosmetic composition is wetted

This claim is not specifically addressed nor is there rationale proffered by the Office to substantiate the rejection in view of Bechmann and Beck other than the broad unspecific statements found on pages 3-4 of the final Office Action:

At the time the invention was made, it would have been obvious to a person of ordinary skill in the [art] to combine the concept of multi-layer substrate with a surfactant and/or therapeutic benefit agents disposed between the layers so that when wetted provide a cleansing article for the skin with the concept of a multi-layer substrate with a capsule to deliver a liquid to provide a cleansing article for the skin. Therefore, it would be obvious to prepare an article that has a multi-layer substrate with a surfactant and/or therapeutic agent [associated] with the substrate wherein the device also has a capsule that is breakable to deliver the liquid needed to wet the device and provide cleansing property.

However, what is missing from this rationale and, in fact, the combination of the cited publications is even a hint at the arrangement provided for in Claim 82. Furthermore, one would not have modified Beck to include the capsules from Bechmann because doing so would be contrary to the teachings that Beck states are essential to the invention, i.e., immersion in a stream of water. Likewise, Bechmann would not have been modified by including a cosmetic composition associated with the substrate because doing so would also go against Bechmann's essential teachings, i.e., to provide a means for controlling "the flow and direction of the cell's contents." Therefore, the two publications would simply not have been combined because each disclosure is limited to their unique solutions and provide no indication whatsoever for the alleged combination proffered by the Office in raising this rejection. For further guidance on this point, Applicants point to MPEP § 2141.02: "Prior art must be considered in its entirety, including disclosures that teach away from the claims."

More significantly is the fact that nothing in the combination of these two publications provides any description or suggestion for the specific arrangement set forth in claim 82. There simply is no basis to support any conclusion of obviousness based on the combination of the two cited publications.

The invention claimed in Claim 82 is directed to an arrangement in which at least three layers contain particularly positioned breakable capsules and materials that provide a unique benefit to the consumer when used. Applicant has recognized such an arrangement as advantageous in a number of respects. First, the user need not have a water source available for wetting the cosmetic composition, and thus, the article can be used virtually anywhere. Second, by providing a wetting liquid for the cosmetic composition within one or more capsules, it is possible to provide a more desirable and more repeatable result, since the amount of the liquid contained within in the capsule or capsules can be better matched to the cosmetic composition and the amount of cosmetic composition associated with the substrate. Thus, the arrangement is less prone to excessive or insufficient wetting which could occur with known articles in which the article is immersed in water or held under a faucet to wet the composition associated with the substrate.

Moreover, in addition to the above advantages, the arrangement set forth in Claim 82 by providing a moisture impermeable ply, one can prevent the loss of liquid through the back or non-applicator side of the article; when the capsules are broken, the water can be prevented from being freely dispersed to other layers in the article and as such can be used for drying the skin.

It is respectfully submitted that the cited references fail to disclose or suggest the combined features of the present claims. Further, it is submitted that the cited references are not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features

set forth in the present claims. Accordingly, it is submitted that the present claims define patentable subject matter in the sense of 35 U.S.C. §§ 102 and 103.

#### **Claims 95 and 114**

Claim 95 is directed to a cosmetic article including the following elements:

- (A) a substrate with a 1<sup>st</sup> and 2<sup>nd</sup> pocket
- (B) a 1<sup>st</sup> breakable capsule containing a 1<sup>st</sup> liquid in the 1<sup>st</sup> pocket
- (C) a 2<sup>nd</sup> breakable capsule in the 2<sup>nd</sup> pocket
- (D) a cosmetic composition disposed in the cosmetic article such that upon breaking the 1<sup>st</sup> breakable capsule, the liquid contained therein wets the cosmetic composition.

Claim 114 is directed to a cosmetic article including the following elements:

- (A) a substrate with at least one pocket
- (B) a breakable capsule containing a liquid in the pocket
- (C) a cosmetic composition disposed in the cosmetic article such that upon breaking the breakable capsule, the liquid contained therein wets the cosmetic composition.

Once again, these claims are not specifically addressed nor rationale proffered by the Office to substantiate the rejection in view of Bechmann and Beck other than the broad unspecific statements found on pages 3-4 of the final Office Action (reproduced above).

The combination of the cited publications does not even hint at the arrangements set forth in Claims 95 and 114. Certainly, there is nothing in Beck which provides the suggestion for providing at least breakable capsules arranged in pockets such that upon breakage of the capsule, the cosmetic composition in the article becomes wet. Likewise, there is nothing in



Bechmann for the particular arrangement claimed in Claims 95 and 114. Thus, in combination there simply is nothing in the cited publications which teaches or suggests the arrangement of the cosmetic article as claimed in Claims 95 and 114.

Furthermore, one would not have modified Beck to include the capsules from Bechmann because doing so would be contrary to the teachings that Beck states are essential to the invention, i.e., immersion in a stream of water. Likewise, Bechmann would not have been modified by including a cosmetic composition associated with the substrate because doing so would also go against Bechmann's essential teachings, i.e., to provide a means for controlling "the flow and direction of the cell's contents." Therefore, the two publications would simply not have been combined because each disclosure is limited to their unique solutions and provide no indication whatsoever for the alleged combination proffered by the Office in raising this rejection. For further guidance on this point, Applicants point to MPEP § 2141.02: "Prior art must be considered in its entirety, including disclosures that teach away from the claims."

More significantly is the fact that nothing in the combination of these two publications provides any description or suggestion for the specific arrangement set forth in Claim 95 and 114. There simply is no basis to support any conclusion of obviousness based on the combination of the two cited publications.

The inventions claimed in Claims 95 and 114 are directed to arrangements in which breakable capsules are provided in pockets to wet the cosmetic composition associated with the article provides a unique benefit to the consumer when used. Applicant has recognized such an arrangement as advantageous in a number of respects. As to Claim 95, some of the multi-use arrangements for Claim 82 also apply, Moreover, (1) the user need not have a water source available for wetting the cosmetic composition, and thus, the article can be used virtually anywhere; (2) by providing a wetting liquid for the cosmetic composition within one

or more capsules, it is possible to provide a more desirable and more repeatable result, since the amount of the liquid contained within in the capsule or capsules can be better matched to the cosmetic composition and the amount of cosmetic composition associated with the substrate; and (3) the arrangement is less prone to excessive or insufficient wetting which could occur with known articles in which the article is immersed in water or held under a faucet to wet the composition associated with the substrate.

It is respectfully submitted that the cited references fail to disclose or suggest the combined features of the present claims. Further, it is submitted that the cited references are not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features set forth in the present claims. Accordingly, it is submitted that the present claims define patentable subject matter in the sense of 35 U.S.C. §§ 102 and 103.

### **Claim 103**

Claim 103 is directed to a cosmetic article including the following elements:

- (A) a substrate with at least one pocket
- (B) a breakable capsule containing a liquid in the pocket
- (C) a cosmetic composition disposed in the cosmetic article such that upon breaking the breakable capsule, the liquid contained therein wets the cosmetic composition
- (D) a holding portion for holding said article during use

As with Claims 95 and 114 discussed above, this claim is also not specifically addressed nor is there rationale proffered by the Office to substantiate the rejection in view of Bechmann and Beck other than the broad unspecific statements found on pages 3-4 of the final Office Action (reproduced above).

The combination of the cited publications fail to provide even a hint of including a breakable capsule in a pocket, such that upon it's breakage it wets a cosmetic composition associated with the article and further providing a holding portion. In fact, the Office has failed to point to any disclosure which allegedly teaches or suggests the arrangement claimed in Claim 103. On this basis alone, the rejection should be reversed.

Furthermore, one would not have modified Beck to include the capsules from Bechmann because doing so would be contrary to the teachings that Beck states are essential to the invention, i.e., immersion in a stream of water. Likewise, Bechmann would not have been modified by including a cosmetic composition associated with the substrate because doing so would also go against Bechmann's essential teachings, i.e., to provide a means for controlling "the flow and direction of the cell's contents." Therefore, the two publications would simply not have been combined because each disclosure is limited to their unique solutions and provide no indication whatsoever for the alleged combination proffered by the Office in raising this rejection. For further guidance on this point, Applicants point to MPEP § 2141.02: "Prior art must be considered in its entirety, including disclosures that teach away from the claims."

More significantly is the fact that nothing in the combination of these two publications provides any description or suggestion for the specific arrangement set forth in Claim 103. There simply is no basis to support any conclusion of obviousness based on the combination of the two cited publications.

The invention claimed in Claim 103 is directed to an arrangement in which a breakable capsule is provided in a pocket to wet the cosmetic composition associated with the article also having a holding portion, which in its entirety provides a unique benefit to the consumer when used. Applicant has recognized such an arrangement as advantageous in a number of respects. First, the user need not have a water source available for wetting the

cosmetic composition, and thus, the article can be used virtually anywhere. Second, by providing a wetting liquid for the cosmetic composition within one or more capsules, it is possible to provide a more desirable and more repeatable result, since the amount of the liquid contained within in the capsule or capsules can be better matched to the cosmetic composition and the amount of cosmetic composition associated with the substrate. Thus, the arrangement is less prone to excessive or insufficient wetting which could occur with known articles in which the article is immersed in water or held under a faucet to wet the composition associated with the substrate. It is respectfully submitted that the cited references fail to disclose or suggest the combined features of the present claims. Further, it is submitted that the cited references are not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features set forth in the present claims. Accordingly, it is submitted that the present claims define patentable subject matter in the sense of 35 U.S.C. §§ 102 and 103.

Rejection No.2

Rejection No. 2 combines Gruenbacher with Beck and Bechmann. According to the Office: “Bechmann and Beck do not expressly teach 3 or more layers for their articles.” (page 4 of the final Office Action). Supposedly, Gruenbacher compensates for this deficiency and therefore according to the Office: “it would have been obvious to a person of ordinary skill in the art to prepare an article containing multiple layers . . .”(page 5 of the final Office Action).

However, Gruenbacher does not add anything of substance to the combination of Beck and Gruenbacher for the reasons discussed in the context of Rejection No.1. Specifically Gruenbacher is very similar to the teachings of Bechmann in that describes a breakable cavity for carrying materials and therefore, even in combination with Bechmann and Beck, fails to disclose or suggest all of the claim limitations of each and every one of Claims 52-114. Within this set of rejected claims there are 6 independent claims, Claims 52, 82, 95, 103, 105, and 114. Further details on these points are provided in the context of each of these six independent claims in the following.

Gruenbacher simply describes an applicator that contains an internal cavity that is composed of a “fluid-impervious barrier layer” for delivering a product, e.g., a cleaning product (col. 1, line 49 and col. 2, lines 21-33). Thus, Gruenbacher is concerned with delivering a pre-mixed composition upon breakage of the capsules and is similar to pre-moistened articles that deliver ready-to-use compositions right out of the package.

The cited art simply would not have been combined to render the present invention obvious. The references themselves do not suggest the combination proffered in the Office Action and, absent Applicant’s own disclosure, one skilled in the art would not have modified the references as suggested in the Office Action.

- (1) Beck is concerned with **keeping the active agents away from water** and wetting with **an external source**.
- (2) Bechmann puts **all ingredients in the capsules**.
- (3) Gruenbacher is concerned with supplying a **pre-mixed, ready-to-use composition**.

The references fail to suggest the arrangements claimed in Claims 52-114 because the references are directed towards different purposes and objectives as compared with the present invention, and since the references fail to disclose or suggest the advantages achieved by the present invention, the cited references fail to render obvious the subject matter of the present claims.

The invention claimed in Claim 52 is directed to an arrangement in which at least three layers contain particularly positioned breakable capsules and materials that provide a unique benefit to the consumer when used. Moreover, liquid-containing capsules are provided so that when the capsules are broken, the liquid within the capsules wets the cosmetic article and provides heat. This is not described or suggested by the combination of Beck, Bechmann, and Gruenbacher for at least the reasons discussed above concerning Beck and Bechmann and further, in view of the fact that Gruenbacher doesn't provide any more suggestion, motivation or disclosure for the arrangement claimed in Claim 52. Moreover, the invention claimed in Claim 52 by providing an exothermic reaction to warm the liquid associated with the substrate, a warm or hot towel can be provided which does not require an appliance for heating the article.

The invention claimed in Claim 82 is directed to an arrangement in which at least three layers contain particularly positioned breakable capsules and materials that provide a unique benefit to the consumer when used. This is not described or suggested by the combination of Beck, Bechmann, and Gruenbacher for at least the reasons discussed above

concerning Beck and Bechmann and further, in view of the fact that Gruenbacher doesn't provide any more suggestion, motivation or disclosure for the arrangement claimed in Claim 82. The arrangement set forth in Claim 82 by providing a moisture impermeable ply, one can prevent the loss of liquid through the back or non-applicator side of the article; when the capsules are broken, the water can be prevented from being freely dispersed to other layers in the article and as such can be used for drying the skin.

The inventions claimed in Claims 95 and 114 are directed to arrangements in which breakable capsules are provided in pockets to wet the cosmetic composition associated with the article provides a unique benefit to the consumer when used. These arrangements are not described or suggested by the combination of Beck, Bechmann, and Gruenbacher for at least the reasons discussed above concerning Beck and Bechmann and further, in view of the fact that Gruenbacher doesn't provide any more suggestion, motivation or disclosure for the arrangement claimed in Claims 95 and 114.

The invention claimed in Claim 103 is directed to an arrangement in which a breakable capsule is provided in a pocket to wet the cosmetic composition associated with the article also having a holding portion, which in its entirety provides a unique benefit to the consumer when used. This is not described or suggested by the combination of Beck, Bechmann, and Gruenbacher for at least the reasons discussed above concerning Beck and Bechmann and further, in view of the fact that Gruenbacher doesn't provide any more suggestion, motivation or disclosure for the arrangement claimed in Claim 103.

The invention claimed in Claim 105 is directed to an arrangement in which a cosmetic article is disposed in a container which, in turn, has means for breaking the breakable capsule. Moreover, liquid-containing capsules are provided so that when the capsules are broken, the liquid within the capsules wets the cosmetic article. This is not described or suggested by the combination of Beck, Bechmann, and Gruenbacher for at least the reasons discussed above

concerning Beck and Bechmann and further, in view of the fact that Gruenbacher doesn't provide any more suggestion, motivation or disclosure for the arrangement claimed in Claim 105.

Applicant has recognized the arrangements set forth in Claims 52-114 as advantageous in a number of respects. First, the user need not have a water source available for wetting the cosmetic composition, and thus, the article can be used virtually anywhere. Second, by providing a wetting liquid for the cosmetic composition within one or more capsules, it is possible to provide a more desirable and more repeatable result, since the amount of the liquid contained within in the capsule or capsules can be better matched to the cosmetic composition and the amount of cosmetic composition associated with the substrate. Thus, the arrangement is less prone to excessive or insufficient wetting which could occur with known articles in which the article is immersed in water or held under a faucet to wet the composition associated with the substrate. It is respectfully submitted that the cited references fail to disclose or suggest the combined features of the present claims. Further, it is submitted that the cited references are not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features set forth in the present claims. Accordingly, it is submitted that the present claims define patentable subject matter in the sense of 35 U.S.C. §§ 102 and 103.



### Dependent Claims

The above comments apply in equal force to each pending claim. Dependent Claims 2-30, 32-40, 53-81, 83-94, 96-102, 104, and 106-113 all contain further limitations that establish their patentability apart from those in independent Claims 1, 31, 52, 82, 95, 103, 105, and 114.

#### (A)

The arrangements set forth in dependent claims 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 26 include the limitations of Claim 1 and further define a multi-use indicia or arrangements, for example, one portion for cleansing and one portion for conditioning (see Claim 19). As discussed on page 4 of the specification, such arrangements can be provide uses of different compositions and/or for different uses: (1) one portion of the article can be utilized for the application of one composition, and another can be used for applying another composition; and/or (2) the article can have a wet side or a dry side, the wet side used to cleanse and/or condition the skin upon breaking encapsulated liquid, and the dry side can be used to dry the skin after cleansing/conditioning.

There is nothing in the combination of the cited publications in both grounds of rejection which provide any suggestion for the arrangements defined by Claims 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 26.

#### (B)

The arrangements set forth in dependent claims 32, 33, 34, 107, 108 and 109 include the limitations of Claims 31 and 105 and further define the means for breaking the breakable capsule. As discussed in detail above, the arrangement of including a breakable capsule in a

cosmetic product as defined in Claims 31 and 015 is not described nor suggested by the cited art, particularly, in view of the fact that the primary art of Bechmann teaches to modify the cell itself as opposed to providing a means to break the cell. There is certainly no teaching in the combination of cited art for the means as set forth in Claims 32, which includes an opening disposed in a container, a pair a rolls as recited in Claims 33 and 109, a compartment in the container that enables breakage when the lid of the container is closed as recited in Claim 34, a compartment disposed as recited in Claim 107, or an aperture extending through the container as recited in claim 107.

By providing a capsule breaking device associated with the container that contains the articles, additional advantages can be achieved including: (1) ensuring more effective breakage or use of the liquid in the capsule(s); (2) a more repeatable breakage can be achieved because, for example, an excessive or inconsistent breakage force might force the liquid from the article is avoided; and (3) the use of a breaking device can allow the capsules to be formed with a higher breaking pressure (thus avoiding inadvertent breakage before use is desired). See, e.g., the paragraph bridging pages 45-46 of the present specification.

(C)

The arrangements set forth in dependent claims 58, 59, 60, 61, and 62 include the limitations of Claim 52 and further define the association of a first and second cosmetic composition with two portions of the substrate layers. Notwithstanding the fact that the combination of cited art fails to describe the arrangement set forth in Claim 52 in which an exothermic reaction heats the liquid, there is nothing in the combination of cited art for providing two compositions with different portions of the substrate layers.

As discussed on page 10 of the specification: “The provision of separate regions for different cosmetic compositions can be desirable in more reliably applying the compositions

to the skin as compared, e.g., as wipe in which different compositions (such as a surfactant and a conditioner) are provided in the same portion of the substrate. Because the ingredients can be applied separate from, e.g., a surfactant, the user can better control the amount of the additional ingredients to be applied (or the user can choose to not apply the additional ingredient or ingredients).”

There is simply nothing in the cited art which provides any teaching for the arrangements recited in Claims 58, 59, 60, 61 and 62 nor any suggestion for the advantages therein.

(D)

The arrangements set forth in dependent Claims 62, 63, 76, 88, 89 and 113 include the limitations of the claims from which they depend and further recite that the product includes an effervescent material which is wetted upon breaking the capsule to assist lathering of cleansing compositions associated with the substrate. The combination of prior art, in addition to not describing or suggesting the arrangements of the independent claims, fails to provide any teaching for the arrangements recited in Claims 62, 63, 76, 88, 89 and 113. As discussed in the specification on page 41, the inclusion of effervescent material has the advantage of using limited amount of liquid, for example, if the article includes a surfactant to generate good lather for cleansing and/or conditioning the skin when used.

There is simply nothing in the cited art which provides any teaching for the arrangements recited in Claims 62, 63, 76, 88, 89 and 113 nor any suggestion for the advantages therein.

**CONCLUSION**

Accordingly, in view of the above remarks and reasons explaining the patentable distinctness of the presently appealed claims over the applied prior art, Appellants request that the final rejections be REVERSED.

Respectfully submitted,

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APPENDIX I (CLAIMS)

1. (Rejected) A cosmetic article comprising: (a) a substrate; (b) a cosmetic composition associated with said substrate; (c) at least one breakable capsule associated with said substrate, said at least one breakable capsule containing a liquid; wherein upon breaking of said at least one breakable capsule, said liquid wets said cosmetic composition.
2. (Rejected) A cosmetic article as recited in claim 1, wherein said substrate includes a first layer and a second layer, and wherein: at least one of said first layer and said second layer is permeable to said liquid; and said cosmetic composition is associated with said first layer.
3. (Rejected) A cosmetic article as recited in claim 2, wherein at least part of said second layer is impermeable to said liquid.
4. (Rejected) A cosmetic article as recited in claim 2, wherein said at least one breakable capsule is disposed between said first layer and said second layer.
5. (Rejected) A cosmetic article as recited in claim 4, wherein said first layer comprises a first ply and a second ply, and wherein said cosmetic composition is at least partially disposed between said first ply and said second ply.
6. (Rejected) A cosmetic article as recited in claim 4, wherein said at least one breakable capsule contains water.
7. (Rejected) A cosmetic article as recited in claim 6, wherein said cosmetic composition includes a surfactant.

8. (Rejected) A cosmetic article as recited in claim 1, wherein said substrate contains a plurality of said breakable capsules.

9. (Rejected) A cosmetic article as recited in claim 8, wherein said liquid comprises water.

10. (Rejected) A cosmetic article as recited in claim 1, said cosmetic composition includes a surfactant, and wherein a ratio of said liquid to said cosmetic composition is in the range of 1:1 to 10:1 by weight.

11. (Rejected) A cosmetic article as recited in claim 1, wherein said substrate comprises: (i) a first portion having a surfactant associated therewith; and (ii) a second portion having an amount of said surfactant less than said first portion; and wherein said at least one breakable capsule comprises: (iii) a first breakable capsule disposed adjacent to said first portion of said substrate for wetting said first portion; and (iv) a second breakable capsule adjacent said second portion of said substrate for wetting said second portion.

12. (Rejected) A cosmetic article as recited in claim 11, wherein said second portion is substantially free of said surfactant.

13. (Rejected) A cosmetic article as recited in claim 11, wherein said substrate comprises a first layer and a second layer, and wherein said first layer includes said first and second portions of said substrate.

14. (Rejected) A cosmetic article as recited in claim 13, wherein said first portion of said

substrate comprises indicia indicating said first portion of said substrate is for cleansing.

15. (Rejected) A cosmetic article as recited in claim 14, wherein said second portion of said substrate comprises indicia indicating said second portion of said substrate is for rinsing.

16. (Rejected) A cosmetic article as recited in claim 14, wherein a conditioner is associated with said second portion of said substrate, and said second portion comprises indicia indicating second portion of said substrate is for conditioning.

17. (Rejected) A cosmetic article as recited in claim 13, wherein said second layer of said substrate comprises a first impermeable ply and a second ply, and further wherein said first impermeable ply is disposed between said at least one breakable capsule and said second ply such that said second ply of said second layer remains substantially dry upon breaking of said at least one breakable capsule.

18. (Rejected) A cosmetic article as recited in claim 17, wherein said second ply comprises indicia indicating said second ply is for drying.

19. (Rejected) A cosmetic article as recited in claim 11, wherein said first portion of said substrate comprises indicia indicating said first portion is for cleansing, said second portion of said substrate comprises indicia indicating said second portion is for conditioning, and wherein said substrate further comprises a third portion, and wherein said third portion of said substrate comprises indicia indicating said third portion is for drying.

20. (Rejected) A cosmetic article as recited in claim 11, wherein said first portion of said

substrate comprises indicia indicating said first portion is for cleansing, said second portion of said substrate comprises indicia indicating said second portion is for rinsing, and wherein said substrate further comprises a third portion, and wherein said third portion of said substrate comprises indicia indicating said third portion is for drying.

21. (Rejected) A cosmetic as recited in claim 11, wherein said first portion of said substrate is a first substrate layer and said second portion of said substrate is a second substrate layer, said cleansing article further comprising; a third substrate layer disposed between said first substrate layer and said second substrate layer, wherein said first breakable capsule is disposed between said first layer and said third layer, and wherein said second breakable capsule is disposed between said second layer and said third layer, and wherein said third layer is an impermeable layer.

22. (Rejected) A cosmetic article as recited in claim 21, wherein said first portion comprises indicia indicating said first portion is for cleansing.

23. (Rejected) A cosmetic article as recited in claim 22, wherein a conditioner is associated with said second portion of said substrate such that said conditioner is wetted when said second breakable capsule is broken, and wherein said second portion comprises indicia indicating said second portion is for conditioning.

24. (Rejected) A cosmetic article as recited in claim 21, wherein said first substrate layer comprises a first ply and a second ply, and wherein said surfactant is at least partially disposed between said first ply and said second ply.



25. (Rejected) A cosmetic article as recited in claim 1, wherein said cosmetic composition is a make-up removal composition, and wherein a ratio of said liquid to said make-up removal composition is less than or equal to 1.0 by weight.

26. (Rejected) A cosmetic article as recited in claim 23, wherein said ratio is greater than or equal to 0.3 by weight.

27. (Rejected) A cosmetic article as recited in claim 1, wherein a ratio of said liquid to said cosmetic composition is in the range of 1:1 to 50:1 by weight.

28. (Rejected) A cosmetic article as recited in claim 27, wherein said cosmetic composition includes at least one of: a make-up composition, a surfactant composition, and a conditioner.

29. (Rejected) A cosmetic article as recited in claim 1, wherein said cosmetic composition includes a surfactant, and wherein a ratio of said liquid to said surfactant in the range of 1:1 to 10:1 by weight.

30. (Rejected) A cosmetic article as recited in any one of the preceding claims, further comprising a container within which at least one cosmetic article is disposed.

31. (Rejected) A cosmetic product comprising: (a) a container; (b) at least one cosmetic article disposed in said container, said at least one cosmetic article comprising: (i) a substrate; (ii) at least one breakable capsule associated with said substrate, said at least one breakable capsule including a liquid such that upon breaking of said at least one breakable capsule said liquid wets said substrate; and (c) wherein said container includes means for breaking said at

least one breakable capsule.

32. (Rejected) A cosmetic product as set forth in claim 31, wherein said means for breaking said at least one breakable capsule comprises: an opening disposed in said container, wherein upon passing of said cosmetic article through said opening, said cosmetic article is compressed to break said at least one breakable capsule.

33. (Rejected) A cosmetic product as recited in claim 32, further including a pair of rolls disposed adjacent to said opening.

34. (Rejected) A cosmetic product as recited in claim 31, wherein said means for breaking said breakable capsules comprises: (i) a compartment; (ii) a compartment lid disposed adjacent to said compartment; and (iii) wherein said compartment is sized such that upon placement of the cosmetic article in said compartment and closing said lid, said at least one breakable capsule is broken.

35. (Rejected) A cosmetic product as recited in claim 34, wherein said container includes an article storage compartment for storing said plurality of said cosmetic articles and a container lid which selectively opens and closes said article storage compartment, and further wherein said compartment for breaking said at least one breakable capsule is disposed in said container lid.

36. (Rejected) A cosmetic product as recited in claim 31, wherein said plurality of skin care articles includes a first plurality of articles and a second plurality of articles, and wherein said first and second pluralities of articles include at least one of a surfactant and a conditioner;

wherein a ratio of surfactant weight to conditioner weight in said first plurality of articles is in a range of 0.0 to 1.0; and wherein a ratio of conditioner weight to surfactant weight in said second plurality of articles is in a range of 0.0 to 1.0.

37. (Rejected) A cosmetic product as recited in claim 31, wherein said cosmetic article includes a first portion and a second portion, and wherein said first and second portions include at least one of a surfactant and a conditioner, and further wherein a ratio of surfactant weight to conditioner weight in said first portion is in a range of 0.0 to 1.0, and a ratio of conditioner weight to surfactant weight in said second portion is in a range of 0.0 to 1.0.

38. (Rejected) A cosmetic product as recited in claim 31, further including a cosmetic composition associated with said substrate in solid form, and wherein said liquid wets said cosmetic composition upon breaking of said at least one breakable capsule.

39. (Rejected) A cosmetic product as recited in claim 38, wherein a ratio of liquid to said cosmetic composition is in a range of 0.30:1 to 50:1.

40. (Rejected) A cosmetic product as recited in claim 39, wherein said cosmetic composition comprises a make-up removal composition, and wherein a ratio of said liquid to said make-up removal composition is in a range of 0.3:1 to 1:1 by weight.

41. (Withdrawn) A method of forming a cosmetic article comprising: providing at least one substrate web; applying a cosmetic composition to at least a portion of said at least one substrate web; providing at least one liquid containing capsule; and fastening edges of said at least one substrate web such that said at least one liquid containing capsule is held within said

at least one substrate web.

42. (Withdrawn) A method as recited in claim 41, providing a plurality of substrate webs and coupling said plurality of substrate webs together to form a composite substrate web before the step of fastening edges to hold said at least one liquid containing capsule.

43. (Withdrawn) A method as recited in claim 41, wherein said at least one substrate web includes a first substrate ply and a second substrate ply, and wherein the step of applying a cosmetic composition includes sandwiching the cosmetic composition between said first substrate ply and said second substrate ply.

44. (Withdrawn) A method as recited in claim 41, wherein the step of applying a cosmetic composition includes providing the cosmetic composition in an aqueous solution, and applying the aqueous solution to at least a portion of said substrate, and thereafter drying said at least one portion.

45. (Withdrawn) A method as recited in claim 41, wherein said at least one substrate web comprises: at least one permeable substrate ply; and at least one impermeable substrate ply.

46. (Withdrawn) A method as recited in claim 41, wherein said at least one substrate web includes a first substrate layer, a second substrate layer, and a third substrate layer, and wherein said at least one breakable capsule includes a first breakable capsule positioned between said first substrate layer and said second substrate layer, and a second breakable capsule between said second substrate layer and said third substrate layer, and thereafter coupling said first substrate layer to said second substrate layer and coupling said second

substrate layer to said third substrate layer.

47. (Withdrawn) A method as recited in claim 46, further including providing a plurality of said first breakable capsules and a plurality of said second breakable capsules.

48. (Withdrawn) A method as recited in claim 46, wherein said cosmetic composition is associated with one of said first, second and third substrate layers.

49. (Withdrawn) A method as recited in claim 48, wherein said second substrate layer comprises an impermeable ply.

50. (Withdrawn) A method as recited in claim 46, wherein at least one of said first, second, and third substrate layers includes first and second plies, and wherein the step of applying said cosmetic composition to at least a portion of said at least one substrate web includes sandwiching said cosmetic composition between said first and second plies.

51. (Withdrawn) A method as recited in claim 41, wherein the step of providing at least one substrate web includes providing a first substrate web which is at least partially permeable, providing a second substrate web which is impermeable, and providing a third substrate web, and wherein said at least one breakable capsule is positioned between said first substrate web and said second substrate web.

52. (Rejected) A cosmetic article comprising: a first substrate layer; a second substrate layer; a third substrate layer; a first breakable capsule containing a liquid disposed between said first substrate layer and said second substrate layer; a second breakable capsule disposed

between said second substrate layer and said third substrate layer, said second breakable capsule including a first material, and further wherein a second material is disposed between said second substrate layer and said third substrate layer, and wherein said first material and said second material are selected such that upon breaking of said second breakable capsule an exothermic reaction is produced and said exothermic reaction heats the liquid of said first breakable capsule.

53. (Rejected) A cosmetic article as recited in claim 52, wherein said article further includes a cosmetic composition.

54. (Rejected) A cosmetic article as recited in claim 53, wherein said cosmetic composition includes a surfactant.

55. (Rejected) A cosmetic article as recited in claim 54, wherein said surfactant is associated with one of said first and second substrate layers.

56. (Rejected) A cosmetic article s recited in claim 55, wherein at least one of said first substrate layer and said second layer includes two substrate plies, and further wherein said surfactant is at least partially disposed between said two substrate plies.

57. (Rejected) A cosmetic article s recited in claim 52, wherein a first cosmetic composition is associated with said first substrate layer.

58. (Rejected) A cosmetic article as recited in claim 57, wherein said first cosmetic composition is located in a first portion of said first substrate layer, and wherein said article

further includes a second cosmetic composition located in a second portion of said first substrate layer.

59. (Rejected) A cosmetic article as recited in claim 58, wherein a divider extends from a location between said first and second portions of said first substrate layer to said second substrate layer such that a first pocket is disposed between said first portion and said second substrate layer and a second pocket is disposed between said second portion and said second substrate layer, and further wherein said first breakable capsule is disposed in said first pocket and a third breakable capsule is disposed in said second pocket.

60. (Rejected) A cosmetic article as recited in claim 59, wherein said first cosmetic composition includes a surfactant, and said second cosmetic composition includes a conditioner.

61. (Rejected) A cosmetic article as recited in claim 58, wherein said first cosmetic composition includes a surfactant, and said second cosmetic composition includes a conditioner.

62. (Rejected) A cosmetic article as recited in claim 60, further including an effervescent composition which is wetted upon breaking of said first breakable capsule to enhance foaming of said surfactant.

63. (Rejected) A cosmetic article as recited in claim 54, further including an effervescent composition which is wetted upon breaking of said first breakable capsule to enhance foaming of said surfactant.

64. (Rejected) A cosmetic article as recited in claim 52, wherein said second substrate layer includes at a first moisture impermeable ply.

65. (Rejected) A cosmetic article as recited in claim 64, wherein at least one of said first and second substrate layers includes an absorbent ply which retains the liquid of said first breakable capsule.

66. (Rejected) A cosmetic article as recited in claim 65, wherein said absorbent ply includes one of a foam and a sponge material.

67. (Rejected) A cosmetic article as recited in claim 64, wherein said third substrate layer includes a second moisture impermeable ply.

68. (Rejected) A cosmetic article as recited in claim 67, wherein said third substrate layer further comprises an outer substrate layer that can be used for wiping or drying skin, and wherein said second moisture impermeable ply shields said outer ply from said first and second materials.

69. (Rejected) A cosmetic article as recited in claim 68, wherein a cosmetic composition is associated with said first layer.

70. (Rejected) A cosmetic article as recited in claim 68, wherein said first layer includes a first portion and a second portion, and wherein a divider extends from a location between said first portion and said second portion to said second layer to form a first pocket between said



first portion and said second layer and a second pocket between said second portion and said second layer, and wherein said first breakable capsule is disposed in said first pocket.

71. (Rejected) A cosmetic article as recited in claim 70, further including a first cosmetic composition in solid form disposed in at least one of said first portion, said second substrate layer, and said first pocket, and wherein said first cosmetic composition is wetted by the liquid of said first breakable capsule upon breaking of said first breakable capsule.

72. (Rejected) A cosmetic article as recited in claim 70, further including a third breakable capsule disposed in said second pocket.

73. (Rejected) A cosmetic article as recited in claim 72, wherein said first cosmetic composition includes a surfactant composition.

74. (Rejected) A cosmetic article as recited in claim 73, wherein said third breakable capsule includes a rinsing liquid.

75. (Rejected) A cosmetic article as recited in claim 74, wherein said surfactant composition comprises a soap and a non-soap surfactant.

76. (Rejected) A cosmetic article as recited in claim 75, further including an effervescent composition which is wetted upon breaking of said first breakable capsule to enhance lathering of said surfactant composition.

77. (Rejected) A cosmetic article as recited in claim 72, further comprising a second cosmetic

composition located in at least one of said second portion of said first substrate layer, said second pocket, and a portion of said second substrate layer adjacent to said second pocket, and wherein said third breakable capsule includes a liquid which wets said second cosmetic composition when said third breakable capsule is broken.

78. (Rejected) A cosmetic article as recited in claim 77, wherein said first cosmetic composition includes a surfactant, and said second cosmetic composition includes a conditioner.

79. (Rejected) A cosmetic article as recited in claim 78, wherein water is contained in said first and third breakable capsules.

80. (Rejected) A cosmetic article as recited in claim 72, wherein water is contained in at least one of said first and second breakable capsules.

81. (Rejected) A cosmetic article as recited in claim 80, wherein said article includes a plurality of said first breakable capsules and a plurality of said second breakable capsules.

82. (Rejected) A cosmetic article comprising: a first substrate layer; a second substrate layer, wherein said second substrate layer includes at least one moisture impermeable ply; a third substrate layer; a first breakable capsule disposed between said first substrate layer and said second substrate layer, said first breakable capsule containing a first liquid; a first cosmetic composition disposed such that upon breaking of said first breakable capsule, said first cosmetic composition is wetted by said first liquid; a second breakable capsule disposed between said second substrate layer and said third substrate layer.

83. (Rejected) A cosmetic article as recited in claim 82, wherein said second breakable capsule includes a second cosmetic composition disposed therein.

84. (Rejected) A cosmetic article as recited in claim 83, wherein said second cosmetic composition comprises a powder.

85. (Rejected) A cosmetic article as recited in claim 82, wherein said second breakable capsule includes a second liquid, said article further comprising a second cosmetic composition disposed such that said second liquid wets said second composition upon breaking of said second breakable capsule.

86. (Rejected) A cosmetic article as recited in claim 85, wherein said first cosmetic composition includes a surfactant composition, and said second cosmetic composition includes a conditioner.

87. (Rejected) A cosmetic article as recited in claim 86, wherein said surfactant composition includes a soap and a non-soap surfactant.

88. (Rejected) A cosmetic article as recited in claim 86, further including an effervescent material disposed such that said first liquid wets said effervescent material upon breaking of said first breakable capsule and assists lathering of said surfactant.

89. (Rejected) A cosmetic article as recited in claim 82, further including a third breakable capsule disposed between said first substrate layer and said second substrate layer, said third

breakable capsule including an effervescent material in solid form, and wherein upon breaking of said first and third breakable capsules said first liquid wets said effervescent material.

90. (Rejected) A cosmetic article as recited in claim 89, wherein said first breakable capsule contains water.

91. (Rejected) A cosmetic article as recited in claim 90, wherein said article includes a plurality of said first capsules in a plurality of said third capsules.

92. (Rejected) A cosmetic article as recited in claim 82, wherein said first cosmetic composition includes a make-up composition.

93. (Rejected) A cosmetic article as recited in claim 92, wherein said make-up composition includes a foundation make-up.

94. (Rejected) A cosmetic article as recited in claim 93, wherein said second breakable capsule includes a cosmetic powder.

95. (Rejected) A cosmetic article comprising: a substrate, said substrate including a first pocket and a second pocket; a first breakable capsule disposed in said first pocket, said first breakable capsule containing a first liquid; a second breakable capsule disposed in said second pocket; and a cosmetic composition disposed such that upon breaking of said first breakable capsule, said liquid wets said cosmetic composition.

96. (Rejected) A cosmetic article as recited in claim 95, wherein said first breakable capsule contains water.

97. (Rejected) A cosmetic article as recited in claim 95, wherein said second breakable capsule contains a second liquid.

98. (Rejected) A cosmetic article as recited in claim 95, wherein said first and second breakable capsules contain water.

99. (Rejected) A cosmetic article as recited in claim 98, further including a second cosmetic composition disposed such that upon breaking of said breakable capsule, water of said second capsule wets said second cosmetic composition.

100. (Rejected) A cosmetic article as recited in claim 95, wherein said substrate includes: a first substrate layer; a second substrate layer; and a third substrate layer; wherein said first pocket is disposed between said first substrate layer and said second substrate layer, and said second pocket is disposed between said second substrate layer and said third substrate layer.

101. (Rejected) A cosmetic article as recited in claim 95, wherein said substrate includes: a first substrate layer having first and second portions; a second substrate layer having first and second portions; and a divider which couples said first substrate layer to said second substrate layer at a location between the respective first and second portions of the first and second substrate layers, such that said first pocket is disposed between the first portion of the first substrate layer and the first portion of the second substrate layer and said second pocket is disposed between said second portion of said first substrate layer and said second portion of

said second substrate layer.

102. (Rejected) A cosmetic article as recited in claim 95, further including means coupled to at least one of said first and second breakable capsules to prevent movement of said at least one of said first and second breakable capsules.

103. (Rejected) A cosmetic article comprising: a substrate having at least one pocket therein, said at least one pocket including a breakable capsule containing a liquid, said article further comprising a cosmetic composition disposed such that upon breaking of said breakable capsule, said liquid wets said cosmetic composition, the substrate further comprising a holding portion for holding said article during use.

104. (Rejected) A cosmetic article as recited in claim 103, wherein said substrate comprises: a first substrate layer; a second substrate layer; and a divider which divides said substrate into a first portion and a second portion, and wherein said at least one pocket is disposed in said first portion and between said first substrate layer and said second substrate layer and further wherein said second portion comprises said holding portion.

105. (Rejected) A cosmetic product comprising: a container; a cosmetic article disposed inside of said container, said cosmetic article, including a substrate and at least one breakable capsule disposed inside of said substrate; and wherein said container includes means for breaking said at least one breakable capsule.

106. (Rejected) A cosmetic product as recited in claim 105, wherein said container comprises: a first compartment for storing said at least one article; said first compartment

including a first lid; and wherein said means for breaking includes a second compartment for breaking said at least one breakable capsule, said second compartment including a second lid, and wherein when said cosmetic article is disposed in said second compartment, closing of said second lid breaks said at least one breakable capsule.

107. (Rejected) A cosmetic product as recited in claim 106, wherein said second compartment is disposed inside of said first lid.

108. (Rejected) A cosmetic product as recited in claim 106, wherein said means for breaking includes an aperture extending through said container, and wherein said at least one breakable capsule is broken upon passing of said article through said aperture.

109. (Rejected) A cosmetic product as recited in claim 108, further including a pair of rollers disposed adjacent to said aperture.

110. (Rejected) A cosmetic product as recited in claim 108, wherein said at least one breakable capsule includes a first breakable capsule containing water, and wherein said article further includes a cosmetic composition in solid form such that upon breaking of said first breakable capsule, said water wets said cosmetic composition.

111. (Rejected) A cosmetic product as recited in claim 105, wherein said at least one breakable capsule includes a first breakable capsule containing a liquid and a second breakable capsule, said article further including means for producing an exothermic reaction upon breaking of said second breakable capsule.

112. (Rejected) A cosmetic product as recited in claim 105, wherein said article includes a liquid disposed in said at least one breakable capsule and a surfactant composition, wherein said liquid in said at least one breakable capsule wets said surfactant composition upon breaking of said at least one breakable capsule.

113. (Rejected) A cosmetic product as recited in claim 112, wherein said surfactant composition includes a soap and a non-soap surfactant, and wherein the article further includes an effervescent material in solid form which is wetted upon breaking of said at least one breakable capsule to assist lathering of said surfactant composition.

114. (Rejected) A cosmetic article comprising: a substrate having at least one pocket therein, said at least one pocket including a breakable capsule containing a liquid, said article further comprising a cosmetic composition disposed such that upon breaking of said breakable capsule, said liquid wets said cosmetic composition.



APPENDIX II (EVIDENCE)

NONE